Department of Justice Canada | Ministère de la Justice Canada

Canada

NOTES FOR AN ADDRESS
BY
THE HONOURABLE ANNE McLELLAN
MINISTER OF JUSTICE AND
ATTORNEY GENERAL OF CANADA
TO
THE CANADIAN BAR ASSOCIATION

AUGUST 21, 2000
HALIFAX, NOVA SCOTIA

As delivered

Introduction

Thank you Eugene for that kind introduction. It is always a pleasure to address this annual gathering of the Canadian Bar Association. And it's especially nice to be back in Nova Scotia. I was born here and studied political science and law at Dalhousie University, so when I am in Halifax, I often find myself reconnecting with the past and reflecting on the future. So the theme of this conference - where history meets the future - has particular resonance for me here in this city.

Before I begin my remarks today, I would like to congratulate Eugene Meehan on a very successful year and welcome the new President, Daphne Dumont. My department and I are looking forward to working with you over the coming year, Daphne.

This is my fourth opportunity to speak to you and while the tenure of a Minister of Justice is sometimes brief, I have actually worked with four CBA presidents. I feel that to some extent, I represent the past, the present and the future. I wonder if this qualifies me for the LUSK-GERVAIS-GORLICK-MEEHAN-DUMONT AWARD.

As many of you will know, the Minister of Justice usually provides a report of sorts, updating CBA members on the activities of the federal department of justice. However, this year I want to take a somewhat different approach.

Today, I want to reflect on some developments over the past three years but, more particularly, I want to talk with you about the relationship between public confidence and accessibility - access to legal services, access to the justice system and access to some of our most basic institutions of governance.

Restoring public confidence

When I first spoke to you in 1997, I identified three areas of important public concern: the prevention of crime in local communities; the reform of the youth justice system; and the inclusion of victims in the criminal justice system.

Our National Crime Prevention Strategy has helped fund more than 1,000 community-based projects across the country - projects conceived, developed and implemented by communities for communities. In the last Speech from the Throne, the government made a commitment to expanding the resources available for this program (Success by Six).

Through extensive consultations, we have developed a new and better model for youth justice. Our model not only protects Canadians and holds young offenders accountable, but also emphasizes prevention, rehabilitation and restorative justice - it is my hope that my opposition colleagues will join me in ensuring that this bill is passed by the House when we return next month.

Extensive consultations led to *Criminal Code* amendments that enhance the security and privacy of victims of crime in their contact with the criminal justice system, while giving them a greater voice.

Earlier this month, I was pleased to announce the creation of a $25 million fund dedicated to improving victim-related initiatives in conjunction with victim organizations and provincial governments. As in the case of our approach on youth justice, we developed this victims' initiative in consultation with Canadians.

In each of these initiatives, we were conscious of the need to take innovative, multi-faceted approaches which reflected not only the complexity of these issues but the diversity of views.

I believe we have succeeded, while at the same time being respectful of the fundamental values of due process, accountability and responsibility.

Not surprisingly, our initiatives have engendered much debate about the justice system and how it responds to crime.

There are some who have suggested approaches that strike many as cynical, simplistic, punitive and reactionary. These are approaches that are built on fear and that would have you believe that solutions to these issues are simple, that punishment and deterrence are the only values worthy of recognition.

Many of us believe that this approach is too facile - it ignores the root causes of crime; it isolates offenders and victims and it forgets the restorative and rehabilitative purposes of the justice system.

We will continue to rely on a principled approach to our work on these and other challenges in the criminal justice system as we respond to the concerns of Canadians for safe, secure communities.

Emerging Challenges

Access to legal services

I would like to turn, now, to the future. Increasing public confidence in the justice system requires that we take steps to ensure meaningful access to justice for all Canadians.

This issue involves all of us, collectively and individually, as members of the CBA and as practitioners.

We, as lawyers, bear a large responsibility for public confidence in a system of justice which many argue serves some and ignores others. Access cannot be mandated by government; we all have a responsibility to look for ways by which more Canadians can gain meaningful access to their justice system.

Meaningful access depends, in part, on having access to legal services, in a cost-effective and responsive manner.

Affordability cannot become a barrier to justice. People's financial means should not deny them

access to the law.

Legal Aid

For some people, a tool that is critical to ensuring access is legal aid. No justice system is truly accessible unless those who need to use it - or are reluctantly drawn into it - can afford it. A well-designed, efficiently run and compassionate court system is of little use if Canadians cannot financially access it.

The CBA has been vocal in calling for improvements to the current legal aid regime and I understand that Daphne has indicated she, too, will make legal aid a major priority during her mandate. Indeed, I am informed that one hour ago you launched your "Legal Aid Watch" - a network of lawyers who will share stories about the concerns of Canadians who come into contact with our legal aid system.

I want to assure you that I will follow these stories with interest and that I have certainly heard your calls for action. I agree that an adequately funded legal aid program is key to an accessible justice system.

As you know, we are engaged in discussions with the provinces and territories regarding the current criminal legal aid contribution agreements which come up for renewal next year.

While it is too early to predict the outcome of these discussions, I would urge you to continue your vigilance and your advocacy on this issue and to work with me and my provincial and territorial colleagues so we can better understand the critical needs in this area.

Last month, I spoke with your Executive about legal aid and as I said then, I am committed to keeping the dialogue open on this matter.

Paralegals

While effective legal aid is a key element of an affordable, accessible justice system, those who come in contact with the system also need to have access to a wide range of professional and knowledgeable legal support. That is why we need to address the role of paralegals - I know that this is a controversial subject for many of you in this room.

In a recent study, the Honourable Peter Cory concluded that paralegals ought to be restricted to a limited number of summary conviction offences but available to appear before specialized boards and tribunals, and in small claims court and to act in some family law areas.

In Bill C-36, we are proposing to amend the *Criminal Code* so that unregulated paralegals would be limited to appearing in summary conviction matters where the maximum penalty is six months or less. Where the penalty is eighteen months or less, but greater than six months, paralegals would be allowed to practice only where they are authorized to do so under a program approved by the provincial or territorial government.

I believe that this approach is balanced and provides maximum flexibility for the provinces and territories. For those who might otherwise not be able to access the justice system, this is an important issue. Nowhere is this clearer than in the North where agents and native court-workers are used extensively to assist in the delivery of legal services in remote areas.

If we believe in the goal of an accessible justice system, I believe we need to ask whether all legal services must be within the exclusive purview of lawyers. Just as the health sector is engaged in a dialogue about the roles of various health care professionals, I think that we in the legal profession need to engage in a similar debate.

Successful Outcomes - Access to Justice

Of course, Canadians want more than access to the justice system; they want access to a justice system that provides them with fair and effective justice.

All of us, governments, the courts and the legal profession, have a shared responsibility to constantly re-examine our processes and practices to ensure that we are responsive to these needs and aspirations of Canadians. In some cases, this will mean doing things differently.

Doing things Differently

Aboriginal Justice

This is why, for example, the Government of Canada has been working with the provinces and territories and with Aboriginal governments and communities to encourage the development of innovative, community-based justice projects such as the use of circles, community justice committees and diversion mechanisms. I think we are also finding that some of the lessons to be learned from traditional Aboriginal approaches are of direct interest to non-Aboriginal communities. The use of circles, for example, whether for sentencing or in a diversion context, has spread to other parts of the justice system.

Unified Family Court

Another example is the Unified Family Court initiative - a new court model that offers a single window court where family members, including children, can resolve problems in a more timely and less stressful way. With the federal government providing these judicial positions, the provinces have been able to invest additional resources in a range of support services such as counselling and mediation. These services bring together a team of professionals from a variety of disciplines, including lawyers, psychologists and sociologists, to help families and children in need.

Drug Treatment Court

The Drug Treatment Court in Toronto is another example of how we are doing things differently. Here we see collaboration between various orders of government, and among different departments, agencies and disciplines.

The two-and-a-half-year-old court is a collaborative effort between the National Strategy on Crime Prevention, federal prosecutors, the Centre for Addiction and Mental Health, the criminal justice system in Toronto, the Toronto Police Service, the City of Toronto Public Health and Healthy City Office, and numerous community-based service agencies.

This is an interdisciplinary model that makes the health care system the primary player in the battle against drugs and uses the police and the courts to reinforce treatment in breaking the cycle of addiction. We, in government, will continue to pursue new ways of serving Canadians. I urge you to do the same.

Public confidence in Government

Access to Information

Most of what I have had to say today relates to public confidence in the justice system. There is of course a broader context, that of public confidence in government generally.

Maintaining public confidence in our system of government depends, in part, on meeting the growing expectations of citizens that they will have effective input into government decision-

making.

Providing timely, effective access to government information is of course a crucial element in this. As Minister of Justice, I am committed to reviewing and modernizing the legal framework for the management of the government's information holdings.

This morning my colleague the President of the Treasury Board and I jointly announced the establishment of an Access to Information Review Task Force. This interdepartmental Task Force will review the legislative and administrative components of the access to information regime, with a view to revising the *Access to Information Act* to reflect the expectations of the public while protecting its legitimate interests.

The Task Force will be advised by a committee of individuals from outside of government, such as lawyers, academics, journalists and other users of the Access Act who will serve as a sounding board for ideas and proposals.

The Task Force will report on its progress on a regular basis with a final report to be released next fall.

Privacy Review

At the same time, it is important to look at the balance between providing access to information held by government and protecting the privacy of personal information held by government. Both of these issues deal with the relationship of citizens to government information, but the values they protect are different.

In his recent report to Parliament, Privacy Commissioner Bruce Phillips sets out a compelling case that the information environment has been transformed by the Internet, DNA testing, biotechnology, data warehousing and data matching. These are all innovations that challenge the very foundation of the Privacy Act.

As I said in the House of Commons earlier this year, we need to look at the Privacy Act in the context of technological change to ensure its continued relevance. To that end, I have asked my officials to begin a comprehensive review of federal privacy legislation. We will examine proposals for reform that have been made by the Privacy Commissioner, Parliamentarians and concerned Canadians. We will also look at how other countries deal with privacy. And we will consult Canadians on the best approaches to reform in this important area.

I know that Privacy and Access to Information issues are important to the CBA and I look forward to your active involvement in these reviews.

Conclusion

We all understand that the public needs to be involved in its justice system in order to have confidence in it. I believe the innovations I have just outlined have had a real influence on the justice system in the past and will have an even greater influence in the future.

These changing relationships are affecting your work as much as they do mine. New challenges, pressures and opportunities require all of us to do things differently.

- enjoyed my working relationship with the CBA executive
- CBA is an important part of the consultation process

Thank you for your continued commitment and for your partnership.

I wish you a stimulating and productive conference.

Thank you.

Date Modified: **2008-04-14**